

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 1<sup>st</sup> day of August, two thousand and six.

PRESENT:

HON. DENNIS JACOBS,  
HON. ROBERT D. SACK,  
HON. BARRINGTON D. PARKER,  
*Circuit Judges.*

Xue Qi Lin,

*Petitioner,*

v.

No. 05-2537-ag  
NAC

Alberto R. Gonzales, Attorney General,  
*Respondent.*

FOR PETITIONER: John D. Hu, New York, New York.

FOR RESPONDENT: Roslynn R. Mauskopf, United States Attorney for the Eastern District of New York, Varuni Nelson and Dione M. Enea, Assistant United States Attorneys, Brooklyn, New York.

UPON DUE CONSIDERATION of this petition for review of a decision of the Board of Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the petition for review is DENIED.

1           Xue Qi Lin, though counsel, petitions for review of the April 2005 BIA decision denying  
2           his motion to reopen his immigration proceedings so that he could file an application for an  
3           adjustment of status. We assume the parties' familiarity with the underlying facts and procedural  
4           history of the case.

5           This Court reviews the BIA's denial of a motion to reopen or reconsider for abuse of  
6           discretion. *See Kaur v. BIA*, 413 F.3d 232, 233 (2d Cir. 2005) (per curiam); *Jin Ming Liu v.*  
7           *Gonzales*, 439 F.3d 109, 111 (2d Cir. 2006).

8           Lin concedes that he filed his motion to reopen on March 18, 2005, more than 90 days  
9           after both the BIA's order of removal and June 2003 order denying his motion to reopen.  
10          Consequently, he exceeded both the time and numerical limitations applicable to motions to  
11          reopen. *See* 8 C.F.R. § 1003.2(c)(2) (2004).

12          An untimely motion, however, may be maintained if the alien can establish one of four  
13          limited exceptions, one of which allows a motion "[a]greed upon by all parties and jointly filed."  
14          *See* 8 C.F.R. § 1003.2(c)(3)(iii) (2005). Lin argues that, in light of the language in a Bureau of  
15          Citizenship and Immigration Services ("CIS") order which denied his application for adjustment  
16          of status and stated that he could renew his application after proceedings were initiated to enforce  
17          his departure, he relied on that language and waited till such proceedings commenced.  
18          According to Lin, when he was apprehended by immigration officials in March 2005 and  
19          proceedings commenced to deport him, the time to file his motion to reopen based on an  
20          application for adjustment of status was triggered. The letter Lin refers to appears to be a form  
21          letter that the CIS sends in reply to all misfiled motions to reopen. This letter cannot reasonably  
22          be construed as consent from the Bureau of Immigration and Customs Enforcement ("BICE"),

1 which is a completely separate agency. Furthermore, there has been no “jointly filed” motion as  
2 BICE has expressly stated that it did not consent to the motion to reopen. The BIA thus properly  
3 denied Lin’s motion as untimely.

4 For the foregoing reasons, the petition for review is DENIED. Having completed our  
5 review, any stay of removal that the Court previously granted in this petition is VACATED, and  
6 any pending motion for a stay of removal in this petition is DENIED as moot. Any pending  
7 request for oral argument in this petition is DENIED in accordance with Federal Rule of  
8 Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

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11 FOR THE COURT:  
12 Roseann B. MacKechnie, Clerk  
13

14 By: \_\_\_\_\_  
15 Oliva M. George, Deputy Clerk